IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 15717 of 2004

Between:

M/s.Yenkey Drugs & Pharmaceuticals Ltd., a company incorportated under the companies Act having its Registered office at A8, Madhuranagar, Hyderabad.

..... PETITIONER

AND

1 Assistant provident Fund, Commissioner (Recovery)
Sub Account office, 12/1, Sushuram complex,
Patancheru, Medak District.
2 Regional provident Fund Commissioner, Provident Fund office,

Barkatpura, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or a direction more particularly in the nature of writ of Mandamus declaring the action of the Respondents in issuing the impugned notice dated 28-7-2004 is illegal, contrary to the provisions of section 22 of S.I.C.A. which is arbitrary and violative of Article 14 and 19 (1) (g) of the Constitution of India consequently set aside the same.

Counsel for the Petitioner: MR.V.S.RAJU

Counsel for the Respondents:Standing Counsel of E.P.F.Organisation, MR.R.N.REDDY

The Court made the following order at the stage of admission:

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.15717 OF 2004

ORDER:

The petitioner is a Company incorporated under the Companies Act, 1956. The petitioner sought reference under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (hereafter called SICA, for brevity) being Case No.116 of 2004, which is pending. In the meanwhile, the petitioner Company was issued a show cause notice calling upon it to pay outstanding Provident Fund arrears (PF arrears) of Rs.5,07,935/- (Rupees five lakh seven thousand nine hundred thirty five only). It appears the petitioner approached the first respondent requesting for permission to pay the amount in instalments. According to the petitioner, such request was not considered, but the first respondent issued a letter dated 28.07.2004 calling upon it to pay the entire amount within seven days and the petitioner was also informed that warrant of arrest would be issued to execute the recovery certificate. Assailing the same, the present writ petition is filed.

The learned counsel for the petitioner, Sri V.S.Raju, placed strong reliance on paragraph 2.24.5 of Enforcement Manual (Enforment Functions & Functionaries) in support of the contention that as the petitioner is before Board for Industrial and Financial Reconstruction (BIFR) under the provisions of SICA, the respondents ought to have permitted the petitioner to pay PF arrears in instalments. No doubt a reading of paragraph 2.24.5.1 supports the contention. But, as rightly pointed out by the learned Standing Counsel Sri R.N. Reddy for E.P.F.Organisation, the respondents did not refuse such facility to the petitioner. The impugned letter dated 28.07.2004 reads as under:

Sir,

This has reference to your letter dated 06.07.2004 (received in this office on 19.07.2004) requesting for grant of instlment facility to clear the outstanding dues for 11/99 to 6/2003.

During the course of your visit to this office on 02.07.2004, I have personally explained to you the terms & conditions to be abide by you before grant of instalment facility and accordingly I have afforded you a week's time to enable you to get instalment facility from the Regional

P.F.Commissioner, Hyderabad. However, you have not only utterly failed to avail this opportunity but you have not submitted the proper proposal with the revolving Bank Guarantee to the extent of one instalment, a certificate/confirmation regarding remittance of current PF & other dues up to date and giving an undertaking to abide all the terms & conditions prescribed for grant of instalment facility.

Therefore, your request for grant of instalment facility submitted vide your letter dated 06.07.2004 is hereby rejected.

You are therefore hereby directed to pay the entire outstanding dues for the above period within 7 days from today and produce the evidence immediately thereafter failing which, the undersigned would be constrained to issue a Warrant of Arrest against you to execute the Revenue Recovery Certificate received by the undersigned for recovery of the outstanding dues.

Please acknowledge receipt.

Yours faithfully

(A.G.KAMATH)

Assistant P.F.Commissioner (Recovery)

S.A.O., Patancheru

A reading of the above letter would show that when the petitioner company met the first respondent on 02.07.2004, he was asked to furnish revolving bank guarantee for the first instalment, but the petitioner failed to do so. Therefore, the impugned letter was issued to the petitioner. Even now, it is open to the petitioner to comply with the condition of furnishing revolving bank guarantee to enable the first respondent to permit the petitioner to pay PF arrears in instalments. The petitioner may approach the first respondent with revolving bank guarantee as required by the respondents for payment of PF arrears in instalments and, as and when such revolving Bank Guarantee is furnished, the first respondent shall consider the same and pass appropriate orders in accordance with law. This exercise may be completed by the petitioner as well as the first respondent within a period of two weeks from the date of receipt of a copy of this order. Except this observation, no positive direction can be given to the respondents to permit the petitioner to pay the PF arrears in instalments.

The writ petition, with the above observations, is disposed of.

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(V.V.S.RAO,J)

02.09.2004.

pln

Note: Office to issue certified copy by 03.09.2004

(By order)

pln

To

1. The Assistant Provident Fund Commissioner (Recovery), Sub Account Office, 12/1, Sushuram Complex, Patancheru, Medak District.
2. The Regional Provident Fund Commissioner, Provident Fund Office, Barkatpura, Hyderabad.
3. 2 CD copies.

*Form-NIC-OGS/WP{**JA**}*